

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

TODD SEMON, on behalf of himself, and)	
others similarly situated,)	
Plaintiff,)	
)	
v.)	Docket No. 5:10-cv-00143-cr
)	
ROCK OF AGES CORPORATION,)	
SWENSON GRANITE COMPANY, LLC,)	
KURT M. SWENSON, JAMES L. FOX,)	
RICHARD C. KIMBALL, DONALD)	
LABONTE, LAURA A. PLUDE, PAMELA G.)	
SHEIFFER, CHARLES M. WAITE, and)	
FREDERICK E. WEBSTER, JR.)	
Defendants)	

MOTION TO DISMISS OF
DEFENDANT ROCK OF AGES CORPORATION

Defendant Rock of Ages Corporation ("ROAC"), by and through its attorneys, Spink and Miller, PLC, hereby moves, pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb ("SLUSA"), to dismiss the Complaint in the above-captioned matter. As grounds for this Motion, ROAC states as follows:

1. The Complaint should be dismissed because all of Plaintiff's claims are barred by SLUSA. The action is a "covered class action," under SLUSA; is based on state law; alleges a misrepresentation or omission of a material fact or manipulative device or contrivance; action involves a "covered security;" and alleges misrepresentations or omissions were "in connection with" the purchase or sale of such security. 15 U.S.C. §§ 78bb(f)(1-2). Accordingly, the action must be dismissed.

2. Plaintiff challenges a proposed transaction that has not occurred and may never occur. Accordingly, the action is not ripe, and Plaintiff has no standing to assert the cause of action because he has not, and cannot, demonstrate any “injury in fact.”

3. ROAC joins in the Motion to Dismiss filed by Defendants James L. Fox, Pamela G. Sheiffer and Frederick E. Webster, Jr. (the “Committee Defendants”).

4. In support of this Motion, ROAC joins in the Memorandum of Law filed by the Committee Defendants, and incorporates that Memorandum and the arguments therein in support of this Motion.

WHEREFORE, ROAC respectfully requests that the Court enter an order:

- A. Dismissing the Complaint as barred by SLUSA;
- B. Dismissing the Complaint for the reasons that it the cause of action is not ripe and because the Plaintiff has no standing; and
- C. Granting such further relief as may be just, equitable and appropriate.

Dated at Burlington, Vermont, this 21st day of June, 2010.

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